

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Edward Chase

(b) County of Residence of First Listed Plaintiff Burlington County, NJ
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Fernando I. Rivera, Esq., Console Mattiacci Law,
110 Marter Avenue, Suite 502, Moorestown, NJ 08057 215-545-7676

DEFENDANTS

Millwood, Inc.

County of Residence of First Listed Defendant Trumbull County, OH
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- | | |
|--|--|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input type="checkbox"/> 3 Federal Question
(U.S. Government Not a Party) |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input checked="" type="checkbox"/> 4 Diversity
(Indicate Citizenship of Parties in Item III) |

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF	PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4 <input checked="" type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5 <input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 375 False Claims Act
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 330 Federal Employers' Liability	PROPERTY RIGHTS	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	PERSONAL PROPERTY	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 835 Patent - Abbreviated New Drug Application	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 880 Defend Trade Secrets Act of 2016	<input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692)
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 385 Property Damage Product Liability	SOCIAL SECURITY	<input type="checkbox"/> 485 Telephone Consumer Protection Act
<input type="checkbox"/> 195 Contract Product Liability			<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 196 Franchise			<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 850 Securities/Commodities/ Exchange
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	IMMIGRATION	<input type="checkbox"/> 863 DIWC/DIWW (405(g))
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 440 Other Civil Rights	Habeas Corpus:	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 463 Alien Detainee	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input checked="" type="checkbox"/> 442 Employment	<input type="checkbox"/> 510 Motions to Vacate Sentence	FEDERAL TAX SUITS	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 530 General	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 896 Arbitration
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	Other:		<input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision
	<input type="checkbox"/> 448 Education	<input type="checkbox"/> 540 Mandamus & Other		<input type="checkbox"/> 950 Constitutionality of State Statutes
		<input type="checkbox"/> 550 Civil Rights		
		<input type="checkbox"/> 555 Prison Condition		
		<input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement		

V. ORIGIN (Place an "X" in One Box Only)

- | | | | | | | |
|---|---|--|---|--|--|---|
| <input checked="" type="checkbox"/> 1 Original Proceeding | <input type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | <input type="checkbox"/> 5 Transferred from Another District (specify) | <input type="checkbox"/> 6 Multidistrict Litigation - Transfer | <input type="checkbox"/> 8 Multidistrict Litigation - Direct File |
|---|---|--|---|--|--|---|

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
N.J.S.A § 34:19-1, et seq.

VI. CAUSE OF ACTION

Brief description of cause:
Plaintiff was retaliated against.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION
UNDER RULE 23, F.R.Cv.P.

DEMAND \$
in excess of \$75,000

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

08/26/2021

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____

APPLYING IFP _____

JUDGE _____

MAG. JUDGE _____

SIGNATURE OF ATTORNEY OF RECORD

**IN THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF NEW JERSEY**

EDWARD CHASE

21 Dickens Drive
Delran, NJ 08075

Plaintiff,

v.

MILLWOOD, INC.

3708 International Boulevard
Vienna, OH 44473

Defendant.

CASE NO.

JURY TRIAL DEMAND

COMPLAINT

I. INTRODUCTION

Plaintiff, Edward Chase (“Plaintiff”), brings this action against his former employer, Millwood, Inc. (“Defendant”), for wrongful termination and retaliation in violation of the New Jersey Conscientious Employee Protection Act, N.J.S.A. § 34:19-1 *et seq.* (“CEPA”). After believing that Defendant was misleading and withholding information from OSHA related to a government investigation into a workplace accident and engaging in protected whistleblower activity regarding same, Plaintiff was terminated by Defendant just hours after it learned that Plaintiff intended to communicate directly with OSHA regarding Defendant’s misrepresentations and/or omissions and in furtherance of OSHA’s ongoing investigation. Plaintiff now seeks damages, including compensatory and punitive damages, his attorney’s fees and costs, and all other statutory relief that this Court deems appropriate.

PARTIES

2. Plaintiff is an individual and a citizen of the State of New Jersey residing in Delran, New Jersey.

3. Defendant is a citizen of Ohio with a principal place of business located at 3708 International Boulevard, Vienna, Ohio.

4. At all times material hereto, Plaintiff worked in Defendant's Sewell, New Jersey location.

5. Defendant is engaged in an industry affecting interstate commerce and, at all times material hereto, has regularly conducted business in New Jersey.

6. At all times material hereto, Plaintiff was an "employee" of Defendant and "whistleblower" as defined by and within the meaning of CEPA.

7. At all times material hereto, Defendant was an "employer" as defined by and within the meaning of CEPA.

8. At all times material hereto, Defendant acted by and through its authorized agents, servants, workmen, and/or employees acting within the course and scope of their employment or agency and in furtherance of its business.

JURISDICTION AND VENUE

9. The cause of action which forms the basis of this action arises under the CEPA.

10. The District Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(a), in that the Plaintiff and Defendant are of diverse citizenship and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

11. The District Court has jurisdiction over Count I (CEPA) pursuant to 28 U.S.C. § 1332(a).

12. Venue is proper in the District Court under 28 U.S.C. § 1331(b)(2) because a substantial part of the events or omissions giving rise to the claims occurred within this District.

FACTUAL ALLEGATIONS

13. In or around May of 2019, Plaintiff was hired at CORE Erosion Control Services (“CORE”) as a Plant Manager.

14. On or about September 4, 2019, Defendant acquired CORE.

15. After Defendant’s acquisition of CORE, Defendant retained Plaintiff as a Plant Manager in its Sewell, New Jersey location.

16. As Plant Manager at Defendant, Plaintiff reported directly to Chris Verbosky (“Verbosky”), Regional Manager (“RM”); Verbosky reported directly to Chip Trecock (“Trecock”), Owner.

17. Plaintiff’s primary responsibilities as Plant Manager at Defendant included training employees on OSHA regulations and supervising employees to ensure compliance with OSHA’s guidance and regulations related to the health and safety of employees.

18. During his employment with Defendant, Plaintiff was a dedicated employee who exhibited excellent work performance, including receiving numerous merit-based bonuses and being awarded “Best of Show” due to the performance of his plant.

19. On or about August 6, 2020, an employee of Defendant was involved in a workplace incident, which resulted in the employee being severely injured and admitted as an in-patient at a hospital (the “August 6th Workplace Incident”).

20. Upon information and belief, the workplace incident was caused by managerial neglect due to a directive given by Verbosky.

21. According to OSHA Regulation 1904.39(a)(2), all employers are required to notify OSHA when an employee suffers a severe work-related injury.

22. According to OSHA Regulation 1904.39(a)(2), all employers are required to notify OSHA when an employee is admitted to a hospital related to a work-related injury.

23. According to OSHA Regulation 1904.39(a)(2), an in-patient hospitalization related to a work-related injury must be reported within 24 hours.

24. Defendant failed to report the August 6th Workplace Incident to OSHA within the required timeframe and in violation of OSHA Regulation 1904.39(a)(2).

25. On August 7, 2020, Mondell Elliott, Safety Manager, sent an email to several employees, including Plaintiff, confirming that the employee injured during the August 6th Workplace Incident was “in patient admitted” at a local hospital.

26. Upon information and belief, Defendant was cited and fined by OSHA for failing to report the August 6th Workplace Incident in a timely manner.

27. Between August 6, 2020, and August 18, 2020, Defendant actively tried to conceal the August 6th Workplace Incident from OSHA.

28. On or about August 18, 2020, after the injured employee underwent surgery and filed a workers’ compensation claims, Defendant finally reported the August 6th Workplace Incident to OSHA.

29. On or about August 25, 2020, OSHA conducted an on-site visit at Defendant and began an investigation into the August 6th Workplace Incident (the “OSHA Investigation”).

30. As part of the OSHA Investigation, OSHA requested that Defendant produce, *inter alia*, relevant work logs, witness statements, and allow for a visual inspection of certain equipment.

31. In response to OSHA's request, Defendant asked Plaintiff to collect witness statements from the employees on duty during the August 6th Workplace Incident, which Plaintiff did.

32. As part of the OSHA Investigation, Plaintiff secured witness statements from two eyewitnesses, Victor Cruz ("Cruz") and Michael McAuliffe ("McAuliffe"), which noted Defendant's negligence in how employees were instructed to operate the machinery that caused the injury.

33. The witness statement obtained by Plaintiff from McAuliffe (and given to Defendant) was not provided to OSHA.

34. The witness statement obtained by Plaintiff from Cruz, which required a translation from Spanish to English, appeared to Plaintiff to be materially different than the statement he was given by Cruz.

35. On August 28, 2020, Elliott sent an email to various employees, including Plaintiff, in which he stated that, "OSHA wants to interview [Cruz], so it is best if we know what he is saying before that happens."

36. Upon information and belief, Elliott attempted to get Cruz to change his initial witness statement, and subsequently submitted a second translation of Cruz's statement to OSHA.

37. During OSHA's on-site visit, Plaintiff was instructed by Verbosky to walk employees off of the floor and to leave the job site to avoid them being questioned or speaking with the OSHA investigator.

38. During OSHA's on-site visit, Verbosky attempted to tell Plaintiff what to say to OSHA; Plaintiff cut off Verbosky and objected to telling anything but the truth.

39. Based on, *inter alia*, Defendant's delay in reporting the August 6th Incident; Defendant's failure to provide OSHA with relevant witness statements; Elliott's email regarding Cruz's forthcoming interview with OSHA; Defendant's instructions to Plaintiff regarding what to say to OSHA; and Defendant's instruction to Plaintiff to pull employees off of the job site during OSHA's on-site visit, Plaintiff reasonably believed that Defendant withheld material information from OSHA, was intentionally misleading and/or lying to OSHA, and was attempting to impede the OSHA Investigation for Defendant's personal benefit and gain.

40. On August 31, 2020, at approximately 6:30 a.m., Plaintiff informed Meredith Cheney ("Cheney"), Site Administrator, that he was going directly to OSHA because Defendant was trying to "cover up" the August 6th Incident.

41. On August 31, 2020, at approximately 6:45 a.m., Plaintiff informed his subordinate employees that he was going directly to OSHA to discuss the August 6th Incident and told them to tell the truth to OSHA.

42. On August 31, 2020, at approximately 7:00 a.m., Plaintiff told Edward Evans ("Evans"), Sales Representative, that he was leaving work for the day and asked him to provide coverage for his shift.

43. During the afternoon of August 31, 2020, Cheney told Verbosky and David Stewart ("Stewart"), Head of HR, that, *inter alia*, Plaintiff informed her that Plaintiff was going to OSHA to discuss the August 6th Incident; and that Plaintiff believed that Defendant was requesting employees to change their story regarding the August 6th Incident.

44. Verbosky immediately reported what Cheney informed him about Plaintiff to Elliott and Jason Olander ("Olander"), Regional Safety Auditor.

45. Shortly after Cheney's conversation with Verbosky and Stewart, Plaintiff received phone calls from Verbosky and Adam Engleboch ("Engleboch"), Assistant.

46. On August 31, 2020, at 2:18 p.m. and 2:21 p.m., respectively, Plaintiff communicated with OSHA on his work-issued cell phone to schedule an in-person meeting to discuss information that he reasonably believed was being withheld by Defendant related to OSHA's Investigation.

47. On August 31, 2020, sometime between 3:00 p.m. and 9:15 p.m., Defendant deactivated Plaintiff's work-issued cell phone and access to work emails.

48. On August 31, 2020, on the same day that Defendant learned that Plaintiff was objecting to, and refusing to participate in, what Plaintiff reasonably believed was unlawful conduct, Defendant terminated Plaintiff's employment.

49. On September 1, 2020, at 10:20 a.m., Plaintiff received a call from McAuliffe informing him that Chris Sztenderowicz ("Sztenderowicz"), Regional Sales Manager, announced at a morning staff meeting that Plaintiff was no longer with the company and that Evans was taking over his job as Plant Manager.

50. McAuliffe informed Plaintiff that during the morning staff meeting Verbosky said that he was "putting a rumor to rest and not asking anyone to lie on their statement."

51. After his call with McAuliffe, Plaintiff called another employee at Defendant, Kalief Tyler ("Tyler"), who confirmed that Defendant announced that Plaintiff was replaced by Evans at the morning staff meeting.

52. Plaintiff engaged in protected activity by providing information to OSHA related to the OSHA Investigation.

53. Plaintiff engaged in protected whistleblower activity by disclosing to management and OSHA that he reasonably believed Defendant withheld material information from OSHA, intentionally misled and/or lied to OSHA, and attempted to impede the OSHA Investigation for Defendant's personal benefit and gain, which he reasonably believed was unlawful, in violation of Section 17 of OSHA Act of 1970, and constituted fraudulent and/or criminal activity.

54. Plaintiff engaged in protected whistleblower activity by objecting to and refusing to participate in Defendant's withholding of material information from OSHA, intentionally misleading and/or lying to OSHA, and attempting to impede the OSHA Investigation for Defendant's personal benefit and gain, which he reasonably believed was unlawful, in violation of Section 17 of OSHA Act of 1970, constituted fraudulent and/or criminal activity, and was incompatible with a clear mandate of public policy.

55. Plaintiff's whistleblower activity was a determinative and/or motivating factor in Defendant's retaliatory treatment of Plaintiff, *e.g.*, his termination.

56. By committing the foregoing acts of retaliation, Defendant violated CEPA.

57. As a direct and proximate result of the retaliatory conduct of Defendant, Plaintiff has in the past incurred, and may in the future incur, among other things, a loss of earnings and/or earning capacity, loss of benefits, pain and suffering, embarrassment, humiliation, loss of self-esteem, mental anguish and loss of life's pleasures, the full extent of which is not known at this time.

58. The retaliatory conduct of Defendant involved upper management's actual participation and/or their willful indifference to the alleged wrongful conduct, warranting the imposition of punitive damages.

COUNT I
RETALIATION IN VIOLATION OF CEPA

59. Plaintiff incorporates the above paragraphs as if set forth herein in their entirety.
60. Defendant violated CEPA by terminating Plaintiff after he disclosed, objected to, and refused to participate in unlawful conduct.
61. Defendant violated CEPA by terminating Plaintiff for participating in the OSHA Investigation.
62. As a direct and proximate result of Defendant's violations of CEPA, Plaintiff has suffered the injuries, damages, and losses set forth herein.
63. Members of upper management of Defendant actively participated in or were willfully indifferent to the violations of CEPA, warranting the imposition of punitive damages.
64. Plaintiff is now suffering and will continue to suffer irreparable injury and monetary damages as a result of Defendant's unlawful acts unless and until this Court grants the relief requested herein.
65. Plaintiff is entitled to all costs and attorney's fees incurred as a result of Defendant's violation of CEPA.
66. No previous application has been made for the relief requested herein.

RELIEF

WHEREFORE, Plaintiff seeks damages and legal and equitable relief in connection with Defendant's unlawful conduct, and specifically prays the Court to grant the following relief to Plaintiff by:

- (a) Declaring the acts and practices complained of herein to be in violation of CEPA;
- (b) Enjoining and restraining permanently the violations alleged herein;

- (c) Awarding compensatory damages to Plaintiff to make Plaintiff whole for past and future lost earnings, benefits and earnings capacity, which Plaintiff has suffered and will continue to suffer as a result of the unlawful conduct by Defendant;
- (d) Awarding compensatory damages to Plaintiff for past and future emotional distress, mental anguish, humiliation, loss of life's pleasures, and pain and suffering;
- (e) Awarding Plaintiff costs associated with pursuing his action, together with reasonable attorney's fees;
- (f) Awarding Plaintiff punitive damages;
- (g) Awarding Plaintiff such other damages as are appropriate under CEPA; and,
- (h) Granting any further relief as this Court deems appropriate.

CONSOLE MATTIACCI LAW, LLC

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Dated: 8/26/2021

Attorneys for Plaintiff